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TABITHA BALVINA KNIESCH

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TABITHA BALVINA KNIESCH,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC., a
Pennsylvania corporation,

Defendant.

Case No. C07-03398-RMW-PVT

**JOINT CASE MANAGEMENT
STATEMENT AND FEDERAL RULE
OF CIVIL PROCEDURE 26(f)
DISCOVERY PLAN**

Date: October 5, 2007
Time: 10:30 a.m.
Judge: Honorable Ronald M.
Whyte
Courtroom: 6, 4th Floor
Place: 280 South First Street
San Jose, California

The parties in the above-entitled action hereby submit this Joint Case Management Statement and Federal Rule of Civil Procedure 26(f) Discovery Plan for the initial case management conference to be conducted in this matter on October 5, 2007, at 10:30 a.m.

1. Jurisdiction and Service

The basis for the Court's subject matter jurisdiction is federal question jurisdiction. No parties remain to be served.

2. Statement of Facts

a. Plaintiff's Statement

This case is brought by an individual consumer to address Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and of the Rosenthal

1 Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.33 (hereinafter
2 “RFDCPA”). The alleged violations stem from Defendant’s communications attempting to collect
3 a consumer debt from Plaintiff. Collection efforts by the Defendant have been detailed in the
4 Complaint.

5 Generally, Plaintiff owed a consumer debt which was sold, assigned or otherwise transferred
6 to Defendant for collection. Thereafter, Defendant began telephoning Plaintiff in an attempt to
7 collect the debt. On or about December 7, 2006, an employee of Defendant using the name Mr.
8 Fuller made a telephone call to Plaintiff on her cellular telephone. When Plaintiff answered the
9 cellular telephone call she was shopping in a store and could not talk to Defendant’s employee.
10 Plaintiff told Defendant’s employee that it was an inconvenient time for her to talk to him then
11 Plaintiff disconnected the telephone call.

12 Immediately thereafter, Defendant’s employee placed another telephone call to Plaintiff’s
13 cellular telephone and when Plaintiff did not answer the call, Defendant’s employee recorded the
14 following message to Plaintiff’s voice mail:

15 Yes, Tabitha. How you doing. Mr. Fuller calling at NCO. No use in playing games.
16 We’ll be getting to know each other real well in the next couple of days. Um, I need
17 a return call. I’m calling in regards to your file number, CD0092. I need a return
18 call from you or your representation. I do have a list of friends and relatives here.
I’ll start contacting if I don’t hear from you, so give me a call. 1-800-227-4000, at
extension 3313. Please reference your file number, CD0092.

19 Plaintiff contends that the voice mail message left by Defendant’s employee failed to
20 disclose Defendant’s identity and the nature of Defendant’s business, in violation of 15 U.S.C. §
21 1692d(6) and Cal. Civil Code § 1788.11(b). See, *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.
22 Supp. 2d 1104, 1112, 1118 (C.D. Cal. 2005).

23 Plaintiff contends that Defendant’s employee failed to disclose that the voice mail message
24 was a communication from a debt collector, in violation of 15 U.S.C. § 1692e(11), and Cal. Civil
25 Code § 1788.17. See *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d 1104, 1116 (C.D.
26 Cal. 2005); *Foti v. NCO Financial Systems, Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

27 Plaintiff contends that Defendant communicated with Plaintiff at a time and place that
28 Defendant knew or should have known was inconvenient for Plaintiff, in violation of 15 U.S.C. §

1 1692c(a)(1), and Cal. Civil Code § 1788.17.

2 Plaintiff contends that Defendant caused Plaintiff's telephone to ring repeatedly or
3 continuously with the intent to annoy, abuse or harass Plaintiff, in violation of 15 U.S.C. § 1692d(5),
4 Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(d).

5 Plaintiff contends that Defendant caused Plaintiff's telephone to ring with such frequency
6 as to be unreasonable and constitute harassment to Plaintiff under the circumstances, in violation
7 of 15 U.S.C. § 1692d(5), Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(e).

8 Plaintiff also contends that Defendant threatened to contact Plaintiff's friends and relatives
9 in an attempt to collect the debt, an action that cannot legally be taken or that was not intended to
10 be taken, in violation of 15 U.S.C. § 1692e(5), Cal. Civil Code § 1788.17 and Cal. Civil Code §
11 1788.12(b).

12 **b. Defendant's Statement**

13 American Express placed plaintiff's account with NCO for collection on or about December
14 6, 2006. According to NCO's records, efforts were made to contact plaintiff in connection with the
15 debt for a period of less than one week, from December 7 to December 12, 2006. Defendant
16 contends it has not violated the FDCPA or Rosenthal Act in connection with efforts to collect
17 plaintiff's account.

18 **3. Legal Issues**

19 The principal legal issues which the parties dispute:

- 20 a. Whether the voice mail message left by Defendant's employee failed to disclose
21 Defendant's identity and the nature of Defendant's business, in violation of 15
22 U.S.C. § 1692d(6) and Cal. Civil Code § 1788.11(b).
- 23 b. Whether Defendant's employee failed to disclose that the voice mail message was
24 a communication from a debt collector, in violation of 15 U.S.C. § 1692e(11), and
25 Cal. Civil Code § 1788.17.
- 26 c. Whether Defendant communicated with Plaintiff at a time and place that Defendant
27 knew or should have known was inconvenient for Plaintiff, in violation of 15 U.S.C.
28 § 1692c(a)(1), and Cal. Civil Code § 1788.17.

1 d. Whether Defendant caused Plaintiff's telephone to ring repeatedly or continuously
2 with the intent to annoy, abuse or harass Plaintiff, in violation of 15 U.S.C. §
3 1692d(5), Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(d).

4 e. Whether Defendant caused Plaintiff's telephone to ring with such frequency as to be
5 unreasonable and constitute harassment to Plaintiff under the circumstances, in
6 violation of 15 U.S.C. § 1692d(5), Cal. Civil Code § 1788.17 and Cal. Civil Code §
7 1788.11(e).

8 f. Whether Defendant threatened to contact Plaintiff's friends and relatives in an
9 attempt to collect the debt, an action that cannot legally be taken or that was not
10 intended to be taken, in violation of 15 U.S.C. § 1692e(5), Cal. Civil Code § 1788.17
11 and Cal. Civil Code § 1788.12(b).

12 **4. Motions**

13 There are no Motions pending at this time. However, the parties will likely file
14 motions for summary judgment or partial summary judgment.

15 **5. Amendment of Pleadings**

16 At this time, Plaintiff does not anticipate amending the Complaint. Plaintiff reserves the
17 right to seek leave of the Court to file an amended Complaint should Plaintiff discover additional
18 facts or claims.

19 **6. Evidence Preservation**

20 Plaintiff will propose a protective order to govern production of confidential material in the
21 litigation.

22 Defendant has directed their relevant employees to preserve all documents, in paper or
23 electronic form, related to the subject matter of this case.

24 **7. Disclosures**

25 **a. Plaintiff's Statement**

26 Plaintiff served formal written disclosures on September 12, 2007, as required by Fed. R.
27 Civ. P. 26(a)(1).

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1 **b. Defendant's Statement**

2 Defendant will serve written disclosures on or before September 28, 2007, as required by
3 Fed. R. Civ. P. 26(a)(1).

4 **8. Discovery**

5 **Plaintiff's Discovery:** Plaintiff will serve Interrogatories and Requests for Production of
6 Documents shortly. At this time and without the benefit of Defendant's initial disclosures, Plaintiff
7 anticipates that she may require up to 10 depositions in this matter.

8 **Defendant's Discovery:** Defendant will serve Interrogatories and Requests for Production
9 of Documents directed at assessing Plaintiff's claims as well as the nature and extent of her claimed
10 damages. Defendant anticipates taking the deposition of plaintiff. Additional depositions may be
11 needed based upon plaintiff's responses to discovery, but defendant anticipates taking no more than
12 two additional depositions.

13 **9. Class Actions**

14 This case is not a class action. Plaintiff reserves the right to seek leave of the Court to file
15 an amended Complaint containing class allegations.

16 **10. Related Cases**

17 The parties are not aware of any related cases at this time.

18 **11. Relief**

19 **a. Plaintiff's Statement**

20 Plaintiff requests that this Court:

- 21 i. Declare that Defendant's voice mail message violated the Fair Debt
22 Collection Practices Act, 15 U.S.C. §§ 1692d(6) and 1692e(11);
- 23 ii. Declare that Defendant's voice mail message violated the Rosenthal Fair
24 Debt Collection Practices Act, Cal. Civil Code §§ 1788.11(b) and 1788.17;
- 25 iii. Declare that Defendant violated the Fair Debt Collection Practices Act, 15
26 U.S.C. §§ 1692c(a)(1), 1692d(5) and 1692e(5);
- 27 iv. Declare that Defendant violated the Rosenthal Fair Debt Collection Practices
28 Act, Cal. Civil Code §§ 1788.11(b) and 1788.17;

- v. Award Plaintiff actual damages in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1) and Cal. Civil Code § 1788.30(a).
- vi. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- vii. Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- viii. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code §1788.17;
- ix. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c); and
- x. Award Plaintiff such other and further relief as may be just and proper.

b. Defendant's Statement

Defendant seeks entry of dismissal of the complaint and such other and further relief as may be just and proper.

12. Settlement and ADR

Parties have filed a Joint ADR Stipulation and Proposed Order selecting Mediation as the ADR process in this case.

13. Consent to Magistrate Judge for All Purposes

The Parties have not consented to a Magistrate Judge for all purposes.

14. Other References

None at this time.

15. Narrowing of Issues

The Parties anticipate that resolution of motions may narrow the issues for determination.

16. Expedited Schedule

The parties do not believe that an expedited schedule is necessary.

17. Scheduling

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|--------------------------------------|-----------------------------|
| Initial Case Management Conference | October 5, 2007 |
| Close of Fact Discovery | March 31, 2008 |
| Fed. R. Civ. P. 26(a)(3) Disclosures | April 14, 2008 |
| Last Day to File Dispositive Motions | May 5, 2008 |
| Opposition to Dispositive Motions | May 19, 2008 |
| Replies to Dispositive Motions | May 26, 2008 |
| Hearing on Dispositive Motions | June 13, 2008, at 9:00 a.m. |
| Final Pre-Trial Conference | June 19, 2008, at 2:00 p.m. |
| Jury Trial | July 9, 2008, at 1:30 p.m. |

18. Trial

The parties anticipate that the action can be ready for trial in July 2008.

Estimated length of trial is 2-3 days.

19. Disclosure of Non-Party Interested Entities or Persons**a. Plaintiff's Statement**

Pursuant to Civil L.R. 3-16, Plaintiff states, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- i. Tabitha Balivina Kniesch, an individual residing in Campbell, California.

b. Defendant's Statement

Pursuant to Civil L.R. 3-16, Defendant states, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- i. Defendant NCO Financial Systems, Inc. (“NCO”), a Pennsylvania corporation;
- ii. JDR Holdings, Inc. (“JDR”), a Delaware corporation, whole owner of NCO;
- iii. Compass International Services Corporation (“Compass”), a Delaware corporation, whole owner of JDR;
- iv. NCO Group, Inc. a Delaware corporation, whole owner of Compass.

20. Other Matters

None at this time.

Dated: September 18, 2007

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.
Attorney for Plaintiff
TABITHA BALVINA KNIESCH

Dated: September 18, 2007

/s/ Debbie P. Kirkpatrick
Debbie P. Kirkpatrick, Esq.
Attorney for Defendant
NCO FINANCIAL SYSTEMS, INC.